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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,028	09/26/2000	Sveinn Olafsson	JEK/BEU/OLAFSSON	4704

7590

08/21/2003

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EXAMINER

PADGETT, MARIANNE L

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 08/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**United States Patent and Trademark Office**  
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09/679028

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED: 10

Below is a communication from the EXAMINER in charge of this application  
 COMMISSIONER OF PATENTS AND TRADEMARKS

**ADVISORY ACTION**

**THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.**

Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check only a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 707.07(f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
 2. ☒ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.  
 3. ☐ The proposed amendment(s) will not be entered because:  
 (a) ☐ they raise new issues that would require further consideration and/or search. (see NOTE below);  
 (b) ☐ they raise the issue of new matter. (see NOTE below);  
 (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

**NOTE:**

*While switching to linear dimensions could be considered a new issue, the rejection adequately covers this concept.*

*original*

4. ☒ Applicant's reply has overcome the following rejection(s):  
*the amendment to claim 1 fixes the 11.25 micron, as well as being dimensionally consistent (the new matter was based on the value, not the units, as lacking in support, since a 11.25 micron shape would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s)).*  
 5. ☐ Newly proposed or amended claim(s)  
 6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *applicant's request to be reading limits into the term "cryogenic medium" that are not necessary for claim language or accepted definitions. If one has raised by the Examiner in the final rejection.*  
 7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
 8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):  
 Claim(s) allowed: ~~1-3~~  
 Claim(s) objected to: 4  
 Claim(s) rejected: 1-3 + 5-16  
 Claim(s) withdrawn from consideration: 17-46

9. ☐ The proposed drawing correction filed on \_\_\_\_\_ a) ☐ has b) ☐ has not been approved by the Examiner.  
 10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

11. ☒ Other: *While applicant's representative has submitted a letter to support their allegation that Mr. Henry is an employee only, and not an inventor (the rejection of p.6 paper 6, section 4, 102(f) was based on Mr. Henry's Mr. O'Hara's presently both being listed as inventors in the RIT file), a copy of the published cover page/abstract of WO 02/26400 affirms that only Mr. O'Hara is an inventor, and the information derived from the RIT file in 11/19/02 was either misleading or incorrect therein, the attached copy of the RIT/USO/127729 → WO 02/26400, abstract and the 102(f) rejection per claim 1-16. Applicant's representative (7/1/03) gave SUPERFICIAL and the rejection was NEVER based on the assertion, but on the applicant's misrepresentation.*

MARIANNE PADGETT  
 PRIMARY EXAMINER